

RESOLUTION No. 2008-111-798

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AWARDED A BID TO HARVEY, COVINGTON & THOMAS, L.L.C, TO PROVIDE AUDITING SERVICES IN AN AMOUNT NOT TO EXCEED \$178,500.00; APPROVING THE AUDIT COMMITTEE; AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE AN AGREEMENT FOR THIS PURPOSE; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, in accordance with §218.39, Florida Statutes, all municipalities are required to have an annual audit performed by an independent certified public accountant, and

WHEREAS, the City's contract with its current Auditors ended with the audit of the 2007 Fiscal Year, and

WHEREAS, a Request for Proposals was prepared in accordance with §218.391, Florida Statutes, for qualified certified public accountant(s) to audit the City's financial statements for Fiscal Years 2008-2010, and was advertised on January 24, 2007, and

WHEREAS, Four proposals were received from Alberni Caballero & Castellanos L.L.P. with C Borders-Byrd, CPB LLC, located in Coral Gables, Florida; Harvey, Covington & Thomas, L.L.C, located in Hollywood, Florida; Rachlin LLP, located in Miami, Florida; and TCBA Watson Rice LLP, located in Miami, Florida, and

WHEREAS, an evaluation committee consisting of Horace McHugh, Assistant City Manager; William Alonso, Finance Director; and Daniel Rosemond, Community Development Director evaluated the proposals in accordance with the criteria, and

WHEREAS, the evaluation committee ranked the firms as follows:

- TCBA Watson Rice 264
- Rachlin LLP 254
- Alberni Caballero & Castellanos 247
- Harvey, Covington & Thomas 245

WHEREAS, the evaluation committee originally recommended that the City Council contract with TCBA Watson Rice, LLP & Associates, however, the negotiations with TCBA Watson Rice, LLP & Associates fell through, and therefore staff is recommending that the City Council contract with the second bidder, Rachlin LLP, and

WHEREAS, the City Council would like to approve the evaluation committee as the Audit Committee and would like to adopt the ranking recommended by the Audit Committee, and

WHEREAS, the City Council would like to select Harvey, Covington & Thomas, L.L.C, to perform the audit services, instead of Rachlin LLP, because of Harvey, Covington & Thomas, L.L.C's, experience in serving the needs of municipalities that are similar to that of the City of Miami Gardens and because the City Council believes that it is in the best interest of the City to rotate it's auditors periodically, and

WHEREAS, the City Council would like to authorize the City Manager to negotiate and execute an Agreement with Harvey, Covington & Thomas, L.L.C,

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AS FOLLOWS:

Section 1. ADOPTION OF REPRESENTATIONS: The foregoing Whereas paragraphs are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Resolution.

Section 2. APPROVAL OF COMMITTEE/ACCEPTANCE OF RANKINGS:


The City Council of the City of Miami Gardens hereby approves the Audit Committee and adopts the ranking recommended by the Audit Committee.

Section 3. AWARD OF BID: The City Council of the City of Miami Gardens hereby awards a bid to Harvey, Covington & Thomas, L.L.C, for auditing services for the City's FY 2008-2010 audits, in an amount not to exceed \$ 178,500.00.

Section 4. AUTHORIZATION: The City Council of the City of Miami Gardens hereby authorizes the City Manager to negotiate and execute an Agreement with Harvey, Covington & Thomas, L.L.C, for auditing services for the City's FY 2008-2010 audits.

Section 5. EFFECTIVE DATE: This Resolution shall take effect immediately upon its final passage.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS AT ITS REGULAR MEETING HELD ON MAY 28, 2008.

  
SHIRLEY GIBSON, MAYOR

ATTEST:

  
RONETTA TAYLOR, CMC, CITY CLERK

PREPARED BY: SONJA KNIGHTON DICKENS, ESQ.  
City Attorney

SPONSORED BY: DANNY CREW, CITY MANAGER

MOVED BY: Councilman Williams  
SECOND BY: Councilwoman Pritchett

**VOTE: 6-0**

Mayor Shirley Gibson	<u>  X  </u> (Yes)	<u>      </u> (No)
Vice Mayor Barbara Watson	<u>  X  </u> (Yes)	<u>      </u> (No)
Councilman Melvin L. Bratton	<u>      </u> (Yes)	<u>      </u> (No) (not present)
Councilman Aaron Campbell	<u>  X  </u> (Yes)	<u>      </u> (No)
Councilman Oliver Gilbert, III	<u>  X  </u> (Yes)	<u>      </u> (No)
Councilwoman Sharon Pritchett	<u>  X  </u> (Yes)	<u>      </u> (No)
Councilman André Williams	<u>  X  </u> (Yes)	<u>      </u> (No)

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# City of Miami Gardens

1515-200 NW 167<sup>th</sup> Street  
Miami Gardens, Florida 33169



Mayor Shirley Gibson  
Vice Mayor Barbara Watson  
Councilman Melvin L. Bratton  
Councilman Oliver G. Gilbert III  
Councilman Aaron Campbell Jr.  
Councilwoman Sharon Pritchett  
Councilman André Williams

## Agenda Cover Page

Date: May 28, 2008

Fiscal Impact: No ☐ Yes ☒

(If yes, explain in Staff Summary)

Funding Source: General Revenues

Contract/P.O. Requirement: Yes ☒ No

Sponsor Name/Department:

**Danny O. Crew, City Manager**

Public hearing ☐

Ordinance ☐

1st Reading ☐

Advertising requirement:

RFP/RFQ/Bid RFP#07-08-023 External Audit Services

Quasi-Judicial ☐

Resolution

2nd Reading ☐

Yes ☒ No

## Staff Summary

In accordance with State Statute 218.39, all municipalities are required to have an annual audit performed by an independent firm of Certified Public Accountants. The City's contract with its current Auditors ended with the audit of the September 30, 2007 fiscal year. An RFP was issued, and an Audit Committee was formed comprised of William Alonso, Finance Director; Horace McHugh, Assistant City Manager; and Daniel Rosemund, Community Development Director in order to evaluate the responses received. The RFP covers the Fiscal Years ended September 30, 2008, 2009, and 2010. The Audit Committee had originally ranked the firms in the following order:

1. Watson Rice LLP
2. Rachlin LLP/Sean Davis & Associates
3. Alberni, Caballero LLC/Cynthia Borders-Boyd
4. Harvey Covington

Based on these rankings, council approved the negotiation of a contract with the top ranked firm, Watson Rice LLP.

Unfortunately, staff was not successful in negotiating a contract with Watson Rice LLP and both parties have agreed to end all negotiations. Therefore, and according to the Auditor General's External Auditor selection guidelines and the resolution that Council adopted on March 12, 2008, the committee recommends awarding the contract to the second ranked firm, Rachlin LLP/Sean Davis & Associates. Rachlin LLP will subcontract part of the audit to the firm of Sean Davis & Associates, who have offices in Miami Gardens. Based on Council's request at the May 14, 2008 meeting, all three firms are present and prepared to make presentations to Council, if needed.

**Recommendation:**

Staff recommends that Council approve and authorize the City Manager to execute the contract with Rachlin LLP/Sean Davis & Associates for the fiscal years from 2008-2010. We have attached a summary of the relevant factors for the remaining three firms so that Council can make an informed decision on this matter.

**CITY OF MIAMI GARDENS  
CONTRACT FOR PROFESSIONAL AUDITOR SERVICES**

THIS AGREEMENT is made and entered into this 1<sup>ST</sup> day of AUGUST, 2008, by and between the City of Miami Gardens, a Florida municipal corporation (hereinafter referred to as "City"), and Harvey, Covington & Thomas LLC, an Independent Certified Public Accounting Firm, authorized to do business in the State of Florida, (hereinafter referred to as "Auditor") and jointly referred to as the Parties.

**WITNESSETH:**

WHEREAS, the City advertised a Request for Proposals ("RFP") 07-08-023 on January 24, 2008, and

WHEREAS, Auditor submitted a Proposal dated February 21, 2008, in response to the City's request; and

WHEREAS, at a meeting held on May 28, 2008, the City Council selected the Auditor and agreed to contract with Auditor to perform the services described in the RFP and Auditor's Proposal submitted in response to the RFP ("Services").

NOW THEREFORE, in consideration of the premises and the mutual covenants herein named, the parties hereto agree as follows:

**Article 1**      **Incorporation by Reference.**

The following documents are hereby incorporated by reference and made part of this Agreement.

- (i) Specifications and Proposal Documents prepared by the City for External Audit Services RFP#07-08-023 (Exhibit 1).
- (ii) Proposal for the City of Miami Gardens prepared by Auditor dated February 21, 2008. (Exhibit 2).

All exhibits may also be collectively referred to as the "Documents". In the event of any conflict between the Documents or any ambiguity or missing specifications or instruction, the following priority is established:

- A. This Agreement
- B. Exhibit 1
- C. Exhibit 2

**Article 2**      **Scope of Work**

This Agreement is made solely for the Services to be performed by the Auditor as described in the Documents. Auditor shall perform the work under the general direction of the City and shall furnish all labor, materials, supplies, equipment, supervision and services necessary for and incident to the

performance of the work, except as otherwise noted in specifications. By signing the Agreement, Auditor represents that it thoroughly reviewed the Documents incorporated into this Agreement by reference and that it accepts the Work and the conditions under which the Work is to be performed.

### Article 3      Qualifications

Auditor and the individual executing this Agreement on behalf of the Auditor warrant to the City that the Auditor is a Florida limited liability partnership duly constituted and authorized to do business in the State of Florida, is in good standing and that Auditor possesses all of the required licenses and certificates of competency required by the State of Florida and the County of Miami-Dade to perform the work herein described.

### Article 4      Compensation

For all Services provided by Auditor, the City shall pay Auditor \$57,500.00 for all-inclusive maximum price for 2008 audit; \$59,500.00 for 2009 audit and \$61,500.00 for 2010 audit pending budget approval. All invoices for fees and compensation shall be submitted in sufficient detail to demonstrate compliance with the terms of this Agreement, and shall include a detailed explanation of all fees and charges.

The City's performance and obligation to pay under this Agreement is contingent upon an annual appropriation for its purpose by the City Council. Auditor shall make no charges to the City for supplies, labor, taxes, licenses, permits, overhead or any other expenses or costs unless any such expense or cost is incurred by Auditor with prior written approval of the City. If the City disputes any charges on the invoices, it may make payment of the uncontested amounts and withhold payment on the contested amounts until they are resolved by agreement with Auditor. There are no reimbursable expenses associated with this Agreement.

### Article 5      Completion Time

The work described herein shall be complete for presentation to the City Council the 1<sup>st</sup> or 2<sup>nd</sup> Council meeting in January following each fiscal year, as long as the City's Finance Department has the documents listed in the Auditor's Audit Preparation Checklist prepared and ready for the audit services to begin by November 1<sup>st</sup> of each year.

### Article 6      Records/Right to Inspect and Audit

The audit working papers are the sole property of Auditor. Provided the City is in full compliance with its contract with Auditor, Auditor will allow a



successor auditor to inspect Auditor's audit working papers, and Auditor will cooperate with such successor auditor.

Auditor shall maintain records, books, documents, papers and financial information pertaining to work performed under this Agreement for a minimum of three years after completion date of the audit. The City Manager or his designee shall, during the term of this Agreement and for a period of three (3) years from the date of termination of this Agreement, have access to and the right to examine and audit any records of Auditor involving transactions related to this Agreement except Auditor's working papers. The City may cancel this Agreement for refusal by Auditor to allow access by the City Manager or his designee to any Records pertaining to work performed under this Agreement that are subject to the provisions of Chapter 119, Florida Statutes.

#### Article 7      Indemnification

Auditor shall defend, indemnify, and hold the City harmless from and against any and all demands, claims, suits, liabilities, causes of action, judgment or damages, arising out of, related to, or in any way connected with Auditor's negligent performance or non-performance of any provision of this Agreement including, but not limited to, liabilities arising from contracts between Auditor and third parties made pursuant to this Agreement. Auditor shall reimburse the City for all of its expenses including reasonable attorney fees and costs incurred in and about defense of any such claim or investigation concerning Auditor's negligence.

#### Article 8      Insurance

Auditor shall maintain at its sole cost and expense at all times, in addition to any other insurance the City may reasonably require professional liability insurance, employee dishonesty insurance, employer's liability insurance, comprehensive general liability insurance and automotive liability insurance with a minimum policy limits for each coverage on one million dollars (\$1,000,000) per occurrence, single limit property damage and bodily injury on each of the above policies, unless prohibited by law, and Auditor shall provide the City with a certificate of same. Auditor shall carry a minimum of \$1,000,000 coverage for errors and omissions. Each policy shall state that it is not subject to cancellation, modification, or reduction in coverage without 30 days written notice to the City prior to the effective date of cancellation, modification, or reduction in coverage.

Auditor shall maintain each of the above insurance policies throughout the term of this Agreement and any extensions of this Agreement.

#### Article 9      Term

This Agreement shall become effective upon execution by both parties and shall continue in force through the completion, acceptance and presentation to City Council of 2010 fiscal year audit, unless sooner terminated as provided herein.

The City shall have the option to renew this Agreement for a period of two years upon the same terms and conditions contained herein upon 90 days written notice to Auditor. Thereafter, any renewal shall be in writing and executed by both parties.

#### Article 10    Termination

The City may, for its convenience and without cause, terminate this Agreement by giving Auditor written notice at least thirty (30) days prior to the effective date of the termination. Upon written notice of the termination, Auditor shall provide only those services and incur only those expenses specifically approved or directed in writing by the City Manager.

Auditor may terminate this Agreement by giving the City notice at least one hundred and eighty (180) days prior to the effective date of termination.

In the event of termination or expiration of this Agreement, Auditor and City shall cooperate in good faith in order to effectuate a smooth and harmonious transition from Auditor to the City or to any other person or entity the City may designate, and to maintain during such period of transition that same services provide to the City pursuant to the terms of this Agreement.

The audit working papers are the sole property of Auditor. Provided the City is in full compliance with its contract with Auditor, Auditor will allow a successor auditor to inspect Auditor's audit working papers, and Auditor will cooperate with such successor auditor.

Auditor will take all reasonable and necessary actions to transfer all records, etc. and data of the City in its possession in an orderly fashion to either the City or its designee in a hard copy and computer format.

#### Article 11    Modification/Amendment

This writing and exhibits contains the entire Agreement of the parties. No representations were made or relied upon by either party, other than those that are expressly set forth herein.

No agent, employee, or other representative of either party is empowered to modify and amend the terms of this Agreement, unless executed in writing with the same formality as this Document. No waiver of any provision of this

Agreement shall be valid or enforceable unless such waiver is in writing and signed by the party granting such waiver.

Article 12    Severability

If any term or provision of this Agreement shall to any extent be held invalid, or illegal by a court of competent jurisdiction, the remainder of this Agreement shall not be effected thereby, and each term and provision of this agreement shall be valid and be enforced to the fullest extent permitted by law.

Article 13    Governing Law

This Agreement shall be construed in accordance with and governing by the laws of the State of Florida. Exclusive venue for any litigation shall be in Miami-Dade County, Florida.

Article 14    Waiver

The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.

No waiver by the City of any provision of this Agreement shall be deemed to be a waiver of any other provisions hereof or of any subsequent breach by Auditor of the same, or any other provision or the enforcement thereof. The City's consent to or approval of any act by Auditor requiring the City's consent or approval shall not be deemed to render unnecessary the obtaining of the City's consent to or approval of any subsequent consent or approval of Auditor, whether or not similar to the act so consented to or approved.

Article 15    Notices/Authorized Representatives

Any notices required or permitted by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered mail with postage prepaid return receipt delivery, by registered or certified mail with postage prepaid return receipt requested, or by Federal Express addressed to the parties at the following address:

City:  
Danny Crew, City Manager  
City of Miami Gardens  
1515 NW 167<sup>th</sup> Street #200  
Miami Gardens, FL 33169

Auditor:  
Roderick Harvey, CPA  
Harvey, Covington, & Thomas, LLC  
3816 Hollywood Blvd. Suite 203  
Hollywood, FL 33021

Either party shall have the right to change its address for notice purposes by sending written notice of such change of address to the other party in accordance with the provisions herein.

#### Article 16     Independent Contractor

Harvey, Covington & Thomas LLC is and shall remain an independent contractor and is not an employee or agent of the City. Services provided by Auditor shall be by employees of Auditor and nothing in this Agreement shall in any way be interpreted or construed to deem said employees to be agents, employees, or representatives of the City.

Auditor shall be responsible for all compensation, tax responsibilities, insurance benefits, other employee benefits, and any other status or rights of its employees during the course of their employment with Auditor. The rights granted to Auditor hereunder are nonexclusive, and the City reserves the right to enter into agreements with other persons or firms to perform services including those hereunder.

#### Article 17     Assignment

Subject to the provisions above, this Agreement shall not be assignable by Auditor.

#### Article 18     Prohibition Against Contingent Fees

Auditor warrants that it has no employees or retained any company or person, other than a bona fide employee working solely for Auditor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s), company, corporation, individual or firm, other than a bona fide employee working solely for Auditor, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

#### Article 19     Attorneys Fees

Should any dispute arise hereunder, the prevailing party shall be entitled to recover against the non-prevailing party all costs, expenses and attorney's fees incurred by the prevailing party in such dispute, whether or not suit be brought, and such right shall include all of such costs, expenses and attorney's fees through all appeals or other actions.

This Agreement and the terms hereof shall be construed in accordance with the laws of the State of Florida and venue for all actions in a court of competent jurisdiction shall lie in Miami-Dade County, Florida.

## Article 20     Non-Discrimination

Auditor agrees to comply with all local and state civil rights ordinances and with Title VI of the Civil Rights Act of 1964 as amended, the Americans with the Disabilities Act of 1990, the Age Discrimination Act of 1975. Auditor will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, disability or other handicap, age, marital/family status or status with regard to public assistance. Auditor will take affirmative action to insure that all employment practices are free from such discrimination.

## Article 21     Conflict of Interest

Auditor agrees to adhere to and be governed by the Miami-Dade County Conflict of Interest Ordinance Section 2-11.11, as amended, which is incorporated by reference herein as if fully set forth herein, in connection with the Agreement conditions hereunder.

## Article 22     Binding Effect

All of the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective assigns, successors, legal representatives, heirs and beneficiaries, as applicable.

## Article 23     Construction

This Agreement and the terms hereof shall be construed in accordance with the laws of the State of Florida and venue for all actions in a court of competent jurisdiction shall lie in Miami-Dade County, Florida.

## Article 24     Entire Agreement

No statements, representations, warranties, either written or oral, from whatever source arising, except as expressly stated in this Agreement, shall have any legal validity between the parties or be binding upon any of them. The parties acknowledge that this Agreement contains the entire understanding and agreement of the parties. No modifications hereof shall be effective unless made in writing and executed by the parties hereto with the same formalities as this Agreement is executed.

## Article 25     Captions and Paragraph Headings

Captions and paragraph headings contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope and intent of this Agreement, nor the intent of any provisions hereof.

Article 26     Joint Preparation

The preparation of this Agreement has been a joint effort of the parties, and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other. It is the parties' further intention that this Agreement be construed liberally to achieve its intent.

Article 27     Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same agreement.

Article 28     Exhibits are Inclusionary

All exhibits attached hereto or mentioned herein which contain additional terms shall be deemed incorporated herein by reference. Typewritten or handwritten provisions inserted in this form or attached hereto shall control all printed provisions in conflict therewith.

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IN WITNESS WHEREOF the undersigned parties have executed this Agreement on the date indicated above.

WITNESSES:

MARIO BATAILLE  
Print Name:

M. Bataille

ATTEST:

Ronetta Taylor  
Ronetta Taylor, EMC  
City Clerk

Harvey, Covington, Thomas LLC

By: RODERICK HARVEY  
Print Name

Roderick Harvey

CITY OF MIAMI GARDENS

By: Danny Crew  
City Manager

Date: 8/01/08

APPROVED AS TO LEGAL SUFFICIENCY AND FORM:

Sonja Dickens  
Sonja Dickens, City Attorney